

1 KELLY M. KLAUS (State Bar No. 161091)
kelly.klaus@mto.com
2 JONATHAN H. BLAVIN (State Bar No. 230269)
jonathan.blavin@mto.com
3 VIRGINIA GRACE DAVIS (State Bar No. 336732)
grace.davisfisher@mto.com
4 MUNGER, TOLLES & OLSON LLP
5 560 Mission Street, Twenty-Seventh Floor
San Francisco, California 94105-2907
6 Telephone: (415) 512-4000
7 Facsimile: (415) 512-4077

8 LAURA D. SMOLOWE (State Bar No. 263012)
laura.smolowe@mto.com
9 SIDNEY MOSKOWITZ (State Bar No. 349400)
sidney.moskowitz@mto.com
10 MUNGER, TOLLES & OLSON LLP
11 350 South Grand Avenue, Fiftieth Floor
Los Angeles, California 90071-3426
12 Telephone: (213) 683-9100
Facsimile: (213) 687-3702
13

14 Attorneys for Defendants
15
16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
17
18

19 TYRONE HAZEL, ROXANE EVANS,
20 VALERIE TORRES, and RHONDA
HYMAN, individually and on behalf of all
21 others similarly situated,

22 Plaintiffs,
23

24 vs.

25 PRUDENTIAL FINANCIAL, INC. and
26 ACTIVEPROSPECT, INC.,

27 Defendants.
28

Case No. 3:22-cv-07465-CRB

**DEFENDANT ACTIVEPROSPECT,
INC.'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFFS' FIRST
AMENDED COMPLAINT**

Judge: Hon. Charles R. Breyer

DEMAND FOR JURY TRIAL

ANSWER

Defendant ACTIVEPROSPECT, INC. (“ActiveProspect”) hereby answers the First Amended Complaint (“FAC”) of Plaintiffs TYRONE HAZEL, ROXANE EVANS, VALERIE TORRES, and RHONDA HYMAN (collectively, “Plaintiffs”) as follows:

1. ActiveProspect admits that Prudential offers consumers life insurance quotes, and that one method by which consumers may obtain a life insurance quote from Prudential is by filling out a webform on term.prudential.com. ActiveProspect lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this Paragraph, and on that basis denies the remaining allegations of Paragraph 1 of the FAC.

2. ActiveProspect admits that it sells software and that Prudential can use ActiveProspect’s software by adding the ActiveProspect JavaScript into the source code of a webpage. Except as specifically admitted herein, ActiveProspect denies the allegations of Paragraph 2 of the FAC.

3. ActiveProspect admits that Prudential uses ActiveProspect’s TrustedForm software. Except as specifically admitted herein, ActiveProspect denies the allegations of Paragraph 3 of the FAC.

4. The allegations of Paragraph 4 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 4 of the FAC.

5. The allegations of Paragraph 5 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 5 of the FAC.

6. ActiveProspect is without knowledge or information as to the truth of the allegations of Paragraph 6 of the FAC regarding Plaintiffs’ actions or intentions and on that basis denies those allegations. The remaining allegations of Paragraph 6 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, ActiveProspect denies those allegations.

1 7. The allegations of Paragraph 7 of the FAC are legal arguments or conclusions as to
2 which no responsive pleading is required. To the extent a response may be required,
3 ActiveProspect denies the allegations of Paragraph 7 of the FAC.

4 8. The allegations of Paragraph 8 of the FAC are legal arguments or conclusions as to
5 which no responsive pleading is required. To the extent a response may be required,
6 ActiveProspect denies the allegations of Paragraph 8 of the FAC.

7 9. The allegations of Paragraph 9 of the FAC are legal arguments or conclusions as to
8 which no responsive pleading is required. To the extent a response may be required,
9 ActiveProspect denies the allegations of Paragraph 9 of the FAC.

10 10. The allegations of Paragraph 10 of the FAC are legal arguments or conclusions as
11 to which no responsive pleading is required. To the extent a response may be required,
12 ActiveProspect denies the allegations of Paragraph 10 of the FAC.

13 11. The allegations of Paragraph 11 of the FAC are legal arguments or conclusions as
14 to which no responsive pleading is required. To the extent a response may be required,
15 ActiveProspect denies the allegations of Paragraph 11 of the FAC.

16 12. ActiveProspect is without knowledge or information as to the truth of the
17 allegations of Paragraph 12 of the FAC and on that basis denies the allegations.

18 13. ActiveProspect is without knowledge or information as to the truth of the
19 allegations of Paragraph 13 of the FAC and on that basis denies the allegations.

20 14. ActiveProspect is without knowledge or information as to the truth of the
21 allegations of Paragraph 14 of the FAC and on that basis denies the allegations.

22 15. ActiveProspect is without knowledge or information as to the truth of the
23 allegations of Paragraph 15 of the FAC and on that basis denies the allegations.

24 16. ActiveProspect admits the allegations of Paragraph 16 of the FAC on information
25 and belief.

26 17. ActiveProspect admits the allegations of Paragraph 17 of the FAC on information
27 and belief.

28

1 18. ActiveProspect admits the allegations of Paragraph 18 of the FAC on information
2 and belief.

3 19. ActiveProspect admits the allegations of Paragraph 19 of the FAC on information
4 and belief.

5 20. ActiveProspect admits the allegations of Paragraph 20 of the FAC.

6 21. ActiveProspect admits that it provides a software product called TrustedForm, and
7 that TrustedForm is a lead certification product that helps businesses comply with regulations like
8 the Telephone Consumer Protection Act (“TCPA”) by documenting consumer consent. Except as
9 specifically admitted herein, ActiveProspect denies the allegations of Paragraph 21 of the FAC.

10 22. ActiveProspect admits that it provides a software product suite for companies that
11 generate online leads. Except as specifically admitted herein, ActiveProspect denies the
12 allegations of Paragraph 22 of the FAC.

13 23. To the extent the allegations in Paragraph 23 purport to describe or quote an
14 ActiveProspect patent, ActiveProspect asserts that the patent is the best evidence of its contents.
15 ActiveProspect denies the allegations to the extent they do not accurately represent
16 ActiveProspect’s patent. Except as specifically admitted herein, ActiveProspect denies the
17 allegations of Paragraph 23 of the FAC.

18 24. ActiveProspect admits that it provides a software product called TrustedForm, and
19 that TrustedForm is a lead certification product that helps businesses comply with regulations like
20 the TCPA by documenting consumer consent. To the extent the allegations in Paragraph 24
21 purport to describe or quote one or more documents or webpages, ActiveProspect asserts that
22 those documents or webpages are the best evidence of their contents. ActiveProspect denies the
23 allegations to the extent they do not accurately represent the documents’ or webpages’ full content
24 and context. Except as specifically admitted herein, ActiveProspect denies the allegations of
25 Paragraph 24 of the FAC.

26 25. To the extent the allegations in Paragraph 25 purport to describe or quote one or
27 more documents or webpages, ActiveProspect asserts that those documents or webpages are the
28 best evidence of their contents. ActiveProspect denies the allegations to the extent they do not

1 accurately represent the documents' or webpages' full content and context. Except as specifically
2 admitted herein, ActiveProspect denies the allegations of Paragraph 25 of the FAC.

3 26. To the extent the allegations in Paragraph 26 purport to describe or quote one or
4 more documents or webpages, ActiveProspect asserts that those documents or webpages are the
5 best evidence of their contents. ActiveProspect denies the allegations to the extent they do not
6 accurately represent the documents' or webpages' full content and context. Except as specifically
7 admitted herein, ActiveProspect denies the allegations of Paragraph 26 of the FAC.

8 27. ActiveProspect admits that it provides instructions on activeprospect.com for how
9 to add the TrustedForm Certify Web SDK to the form page on a website. To the extent the
10 allegations in Paragraph 27 purport to describe or quote one or more documents or webpages,
11 ActiveProspect asserts that those documents or webpages are the best evidence of their contents.
12 ActiveProspect denies the allegations to the extent they do not accurately represent the documents'
13 or webpages' full content and context. Except as specifically admitted herein, ActiveProspect
14 denies the allegations of Paragraph 27 of the FAC.

15 28. ActiveProspect admits that its TrustedForm tool can capture certain information
16 provided by a website user in order to document that user's consent to be contacted. Except as
17 specifically admitted herein, ActiveProspect denies the allegations of Paragraph 28 of the FAC.

18 29. ActiveProspect admits that its TrustedForm tool can capture certain information
19 provided by a website user in order to document that user's consent to be contacted. Except as
20 specifically admitted herein, ActiveProspect denies the allegations of Paragraph 29 of the FAC.

21 30. To the extent the allegations in Paragraph 30 purport to describe or quote an
22 ActiveProspect patent, ActiveProspect asserts that the patent is the best evidence of its contents.
23 ActiveProspect denies the allegations to the extent they do not accurately represent
24 ActiveProspect's patent. Except as specifically admitted herein, ActiveProspect denies the
25 allegations of Paragraph 30 of the FAC.

26 31. To the extent the allegations in Paragraph 31 purport to describe or quote an
27 ActiveProspect patent, ActiveProspect asserts that the patent is the best evidence of its contents.
28 ActiveProspect denies the allegations to the extent they do not accurately represent

1 ActiveProspect's patent. Except as specifically admitted herein, ActiveProspect denies the
2 allegations of Paragraph 31 of the FAC.

3 32. ActiveProspect admits that Paragraph 32 of the FAC includes quotations from a
4 webpage at freedom-to-tinker.com, and that the webpage is the best evidence of its contents. The
5 remaining allegations of Paragraph 32 of the FAC are legal arguments or conclusions as to which
6 no responsive pleading is required. To the extent a response may be required, ActiveProspect is
7 without knowledge or information as to the truth of the allegations of Paragraph 32 of the FAC
8 and on that basis denies the allegations.

9 33. ActiveProspect admits that TrustedForm certificates are stored on ActiveProspect's
10 servers and that accessing a TrustedForm certificate requires a unique URL link. Except as
11 specifically admitted herein, ActiveProspect denies the allegations of Paragraph 33 of the FAC.

12 34. To the extent the allegations in Paragraph 34 purport to quote a webpage,
13 ActiveProspect asserts that that webpage is the best evidence of its content. ActiveProspect denies
14 the allegations to the extent they do not accurately represent the documents' or webpages' full
15 content and context.

16 35. To the extent the allegations in Paragraph 35 purport to quote ActiveProspect's End
17 User License Agreement ("EULA"), ActiveProspect asserts that the EULA is the best evidence of
18 its contents. ActiveProspect denies the allegations to the extent they do not accurately represent
19 the EULA's full content and context.

20 36. ActiveProspect admits that it enters into business relationships with website owners
21 and provides those website owners with its TrustedForm software. Except as specially admitted,
22 ActiveProspect denies the allegations in Paragraph 36 of the FAC.

23 37. The allegations of Paragraph 37 of the FAC are legal arguments or conclusions as
24 to which no responsive pleading is required. To the extent a response may be required,
25 ActiveProspect denies the allegations of Paragraph 37 of the FAC.

26 38. To the extent the allegations in Paragraph 38 purport to describe or quote one or
27 more documents or webpages, ActiveProspect asserts that those documents or webpages are the
28 best evidence of their contents. ActiveProspect denies the allegations to the extent they do not

1 accurately represent the documents' or webpages' full content and context. ActiveProspect lacks
2 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
3 this Paragraph, and on that basis denies the remaining allegations of Paragraph 38 of the FAC.

4 39. To the extent the allegations in Paragraph 39 purport to describe or quote one or
5 more documents or webpages, ActiveProspect asserts that those documents or webpages are the
6 best evidence of their contents. ActiveProspect denies the allegations to the extent they do not
7 accurately represent the documents' or webpages' full content and context. ActiveProspect lacks
8 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
9 this Paragraph, and on that basis denies the remaining allegations of Paragraph 39 of the FAC.

10 40. ActiveProspect admits that Prudential uses ActiveProspect's TrustedForm
11 software. ActiveProspect lacks knowledge or information sufficient to form a belief as to the truth
12 of the remaining allegations of this Paragraph, and on that basis denies the remaining allegations
13 of Paragraph 40 of the FAC.

14 41. ActiveProspect admits that Prudential uses ActiveProspect's TrustedForm
15 software. To the extent the allegations in Paragraph 41 purport to describe or quote one or more
16 documents or webpages, ActiveProspect asserts that those documents or webpages are the best
17 evidence of their contents. ActiveProspect denies the allegations to the extent they do not
18 accurately represent the documents' or webpages' full content and context. ActiveProspect lacks
19 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
20 this Paragraph, and on that basis denies the remaining allegations of Paragraph 41 of the FAC.

21 42. The allegations of Paragraph 42 of the FAC are legal arguments or conclusions as
22 to which no responsive pleading is required. To the extent a response may be required,
23 ActiveProspect is without knowledge or information as to the truth of the allegations in Paragraph
24 42 of the FAC, and on that basis denies the allegations.

25 43. The allegations of Paragraph 43 of the FAC are legal arguments or conclusions as
26 to which no responsive pleading is required. Additionally, to the extent the allegations in
27 Paragraph 43 purport to describe or quote one or more documents or webpages, ActiveProspect
28 asserts that those documents or webpages are the best evidence of their contents. ActiveProspect

1 denies the allegations to the extent they do not accurately represent the documents' or webpages'
2 full content and context. ActiveProspect lacks knowledge or information sufficient to form a
3 belief as to the truth of the remaining allegations of this Paragraph, and on that basis denies the
4 remaining allegations of Paragraph 43 of the FAC.

5 44. To the extent the allegations in Paragraph 44 purport to describe or quote one or
6 more documents or webpages, ActiveProspect asserts that those documents or webpages are the
7 best evidence of their contents. ActiveProspect denies the allegations to the extent they do not
8 accurately represent the documents' or webpages' full content and context. ActiveProspect lacks
9 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
10 this Paragraph, and on that basis denies the remaining allegations of Paragraph 44 of the FAC.

11 45. The allegations of Paragraph 45 of the FAC are legal arguments or conclusions as
12 to which no responsive pleading is required. Additionally, to the extent the allegations in
13 Paragraph 45 purport to describe or quote one or more documents or webpages, ActiveProspect
14 asserts that those documents or webpages are the best evidence of their contents. ActiveProspect
15 denies the allegations to the extent they do not accurately represent the documents' or webpages'
16 full content and context. ActiveProspect lacks knowledge or information sufficient to form a
17 belief as to the truth of the remaining allegations of this Paragraph, and on that basis denies the
18 remaining allegations of Paragraph 45 of the FAC.

19 46. The allegations of Paragraph 46 of the FAC are legal arguments or conclusions as
20 to which no responsive pleading is required. Additionally, to the extent the allegations in
21 Paragraph 46 purport to describe or quote one or more documents or webpages, ActiveProspect
22 asserts that those documents or webpages are the best evidence of their contents. ActiveProspect
23 denies the allegations to the extent they do not accurately represent the documents' or webpages'
24 full content and context. ActiveProspect lacks knowledge or information sufficient to form a
25 belief as to the truth of the remaining allegations of this Paragraph, and on that basis denies the
26 remaining allegations of Paragraph 46 of the FAC.

27 47. The allegations of Paragraph 47 of the FAC are legal arguments or conclusions as
28 to which no responsive pleading is required. Additionally, to the extent the allegations in

1 Paragraph 47 purport to describe or quote one or more documents or webpages, ActiveProspect
2 asserts that those documents or webpages are the best evidence of their contents. ActiveProspect
3 denies the allegations to the extent they do not accurately represent the documents' or webpages'
4 full content and context. ActiveProspect lacks knowledge or information sufficient to form a
5 belief as to the truth of the remaining allegations of this Paragraph, and on that basis denies the
6 remaining allegations of Paragraph 47 of the FAC.

7 48. The allegations of Paragraph 48 of the FAC are legal arguments or conclusions as
8 to which no responsive pleading is required. To the extent a response may be required,
9 ActiveProspect denies the allegations of Paragraph 48 of the FAC.

10 49. The allegations of Paragraph 49 of the FAC are legal arguments or conclusions as
11 to which no responsive pleading is required. To the extent a response may be required,
12 ActiveProspect denies the allegations of Paragraph 49 of the FAC.

13 50. ActiveProspect lacks knowledge or information sufficient to form a belief as to the
14 truth of the allegations of this Paragraph, and on that basis denies the allegations of Paragraph 50
15 of the FAC.

16 51. The allegations of Paragraph 51 of the FAC are legal arguments or conclusions as
17 to which no responsive pleading is required. To the extent a response may be required,
18 ActiveProspect denies the allegations of Paragraph 51 of the FAC. Additionally, ActiveProspect
19 lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this
20 Paragraph, and on that basis denies the allegations of Paragraph 51 of the FAC.

21 52. The allegations of Paragraph 52 of the FAC are legal arguments or conclusions as
22 to which no responsive pleading is required. To the extent a response may be required,
23 ActiveProspect denies the allegations of Paragraph 52 of the FAC.

24 53. ActiveProspect admits that Prudential uses ActiveProspect's TrustedForm
25 software. Except as specifically admitted herein, ActiveProspect denies the allegations of
26 Paragraph 53 of the FAC.

1 54. The allegations of Paragraph 54 of the FAC are legal arguments or conclusions as
2 to which no responsive pleading is required. To the extent a response may be required,
3 ActiveProspect denies the allegations of Paragraph 54 of the FAC.

4 55. The allegations of Paragraph 55 of the FAC are legal arguments or conclusions as
5 to which no responsive pleading is required. To the extent a response may be required,
6 ActiveProspect denies the allegations of Paragraph 55 of the FAC.

7 56. ActiveProspect admits that Paragraph 56 of the FAC purports to summarize the
8 findings of multiple studies, and that the studies are the best evidence of their contents. The
9 remaining allegations of Paragraph 56 of the FAC are legal arguments or conclusions as to which
10 no responsive pleading is required. To the extent a response may be required, ActiveProspect is
11 without knowledge or information as to the truth of the allegations of Paragraph 56 of the FAC
12 and on that basis denies the allegations.

13 57. ActiveProspect is without knowledge or information as to the truth of the
14 allegations of Paragraph 57 of the FAC and on that basis denies the allegations.

15 58. ActiveProspect is without knowledge or information as to the truth of the
16 allegations of Paragraph 58 of the FAC and on that basis denies the allegations.

17 59. The allegations of Paragraph 59 of the FAC are legal arguments or conclusions as
18 to which no responsive pleading is required. To the extent a response may be required,
19 ActiveProspect denies the allegations of Paragraph 59 of the FAC.

20 60. ActiveProspect is without knowledge or information as to the truth of the
21 allegations of Paragraph 60 of the FAC and on that basis denies the allegations.

22 61. ActiveProspect is without knowledge or information as to the truth of the
23 allegations of Paragraph 61 of the FAC and on that basis denies the allegations.

24 62. ActiveProspect is without knowledge or information as to the truth of the
25 allegations of Paragraph 62 of the FAC and on that basis denies the allegations.

26 63. The allegations of Paragraph 63 of the FAC are legal arguments or conclusions as
27 to which no responsive pleading is required. To the extent a response may be required,
28 ActiveProspect denies the allegations of Paragraph 63 of the FAC.

1 64. ActiveProspect is without knowledge or information as to the truth of the
2 allegations of Paragraph 64 of the FAC and on that basis denies the allegations.

3 65. ActiveProspect is without knowledge or information as to the truth of the
4 allegations of Paragraph 65 of the FAC and on that basis denies the allegations.

5 66. ActiveProspect is without knowledge or information as to the truth of the
6 allegations of Paragraph 66 of the FAC and on that basis denies the allegations.

7 67. The allegations of Paragraph 67 of the FAC are legal arguments or conclusions as
8 to which no responsive pleading is required. To the extent a response may be required,
9 ActiveProspect denies the allegations of Paragraph 67 of the FAC.

10 68. ActiveProspect is without knowledge or information as to the truth of the
11 allegations of Paragraph 68 of the FAC and on that basis denies the allegations.

12 69. ActiveProspect is without knowledge or information as to the truth of the
13 allegations of Paragraph 69 of the FAC and on that basis denies the allegations.

14 70. ActiveProspect is without knowledge or information as to the truth of the
15 allegations of Paragraph 70 of the FAC and on that basis denies the allegations.

16 71. The allegations of Paragraph 71 of the FAC are legal arguments or conclusions as
17 to which no responsive pleading is required. To the extent a response may be required,
18 ActiveProspect denies the allegations of Paragraph 71 of the FAC.

19 72. ActiveProspect is without knowledge or information as to the truth of the
20 allegations of Paragraph 72 of the FAC and on that basis denies the allegations.

21 73. ActiveProspect admits that its TrustedForm tool can capture certain information
22 provided by a website user in order to document that user's consent to be contacted. Except as
23 specifically admitted herein, ActiveProspect denies the allegations of Paragraph 73 of the FAC.

24 74. The allegations of Paragraph 74 of the FAC are legal arguments or conclusions as
25 to which no responsive pleading is required. To the extent a response may be required,
26 ActiveProspect is without knowledge or information as to the truth of the allegations of Paragraph
27 74 of the FAC and on that basis denies the allegations.

28

1 75. The allegations of Paragraph 75 of the FAC are legal arguments or conclusions as
2 to which no responsive pleading is required. To the extent a response may be required,
3 ActiveProspect is without knowledge or information as to the truth of the allegations of Paragraph
4 75 of the FAC and on that basis denies the allegations.

5 76. The allegations of Paragraph 76 of the FAC are legal arguments or conclusions as
6 to which no responsive pleading is required. To the extent a response may be required,
7 ActiveProspect is without knowledge or information as to the truth of the allegations of Paragraph
8 76 of the FAC and on that basis denies the allegations.

9 77. The allegations of Paragraph 77 of the FAC are legal arguments or conclusions as
10 to which no responsive pleading is required. To the extent a response may be required,
11 ActiveProspect denies the allegations of Paragraph 77 of the FAC.

12 78. The allegations of Paragraph 78 of the FAC are legal arguments or conclusions as
13 to which no responsive pleading is required. To the extent a response may be required,
14 ActiveProspect is without knowledge or information as to the truth of the allegations of Paragraph
15 78 of the FAC and on that basis denies the allegations.

16 79. To the extent the allegations in Paragraph 79 purport to describe or quote one or
17 more documents or webpages, ActiveProspect asserts that those documents or webpages are the
18 best evidence of their contents. ActiveProspect denies the allegations to the extent they do not
19 accurately represent the documents' or webpages' full content and context. Except as specifically
20 admitted herein, ActiveProspect denies the allegations of Paragraph 79 of the FAC.

21 80. ActiveProspect is without knowledge or information as to the truth of the
22 allegations of the first sentence of Paragraph 80 of the FAC and on that basis denies the
23 allegations. To the extent the remaining allegations in Paragraph 80 of the FAC purport to
24 describe or quote one or more documents or webpages, ActiveProspect asserts that those
25 documents or webpages are the best evidence of their contents. ActiveProspect denies the
26 allegations to the extent they do not accurately represent the documents' or webpages' full content
27 and context. Except as specifically admitted herein, ActiveProspect denies the allegations of
28 Paragraph 80.

1 81. The allegations of Paragraph 81 of the FAC are legal arguments or conclusions as
2 to which no responsive pleading is required. To the extent a response may be required,
3 ActiveProspect denies the allegations of Paragraph 81 of the FAC.

4 82. The allegations of Paragraph 82 of the FAC are legal arguments or conclusions as
5 to which no responsive pleading is required. To the extent a response may be required,
6 ActiveProspect denies the allegations of Paragraph 82 of the FAC.

7 83. The allegations of Paragraph 83 of the FAC are legal arguments or conclusions as
8 to which no responsive pleading is required. To the extent a response may be required,
9 ActiveProspect denies the allegations of Paragraph 83 of the FAC.

10 84. The allegations of Paragraph 84 of the FAC are legal arguments or conclusions as
11 to which no responsive pleading is required. To the extent a response may be required,
12 ActiveProspect denies the allegations of Paragraph 84 of the FAC.

13 85. The allegations of Paragraph 85 of the FAC are legal arguments or conclusions as
14 to which no responsive pleading is required. To the extent a response may be required,
15 ActiveProspect denies the allegations of Paragraph 85 of the FAC.

16 86. The allegations of Paragraph 86 of the FAC are legal arguments or conclusions as
17 to which no responsive pleading is required. To the extent a response may be required,
18 ActiveProspect denies the allegations of Paragraph 86 of the FAC.

19 87. The allegations of Paragraph 87 of the FAC are legal arguments or conclusions as
20 to which no responsive pleading is required. To the extent a response may be required,
21 ActiveProspect denies the allegations of Paragraph 87 of the FAC.

22 88. The allegations of Paragraph 88 of the FAC are legal arguments or conclusions as
23 to which no responsive pleading is required. To the extent a response may be required,
24 ActiveProspect denies the allegations of Paragraph 88 of the FAC.

25
26
27
28

COUNT I

Violation of the California Invasion of Privacy Act (“CIPA”)

Cal. Penal Code § 631

89. Paragraph 89 is a mere reiteration of past allegations to which no response is required. To the extent a response may be required, ActiveProspect incorporates its earlier responses to the foregoing paragraphs.

90. The allegations of Paragraph 90 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 90 of the FAC.

91. The allegations of Paragraph 91 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 91 of the FAC.

92. The allegations of Paragraph 92 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 92 of the FAC.

93. The allegations of Paragraph 93 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 93 of the FAC.

94. The allegations of Paragraph 94 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 94 of the FAC.

95. The allegations of Paragraph 95 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 95 of the FAC.

96. The allegations of Paragraph 96 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 96 of the FAC.

97. The allegations of Paragraph 97 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 97 of the FAC.

98. The allegations of Paragraph 98 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 98 of the FAC.

99. The allegations of Paragraph 99 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 99 of the FAC.

COUNT II

Violation of California Unfair Competition Law (“UCL”)

Cal. Bus. & Prof. Code § 17200 *et seq.*

100. Paragraph 100 is a mere reiteration of past allegations to which no response is required. To the extent a response may be required, ActiveProspect incorporates its earlier responses to the foregoing paragraphs.

101. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required to the allegations of Paragraph 101 of the FAC. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 101 of the FAC.

102. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required to the allegations of Paragraph 102 of the FAC. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 102 of the FAC.

103. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required to the allegations of Paragraph 103 of the FAC. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 103 of the FAC.

Unlawful Conduct

104. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required to the allegations of Paragraph 104 of the FAC. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 104 of the FAC.

Unfair Conduct

105. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required to the allegations of Paragraph 105 of the FAC. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 105 of the FAC.

106. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required to the allegations of Paragraph 106 of the FAC. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 106 of the FAC.

107. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required to the allegations of Paragraph 107 of the FAC. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 107 of the FAC.

108. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required to the allegations of Paragraph 108 of the FAC. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 108 of the FAC.

109. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required to the allegations of Paragraph 109 of the FAC. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 109 of the FAC.

COUNT III

Invasion of Privacy California Constitution, Art. 1, § 1

110. Paragraph 110 is a mere reiteration of past allegations to which no response is required. To the extent a response may be required, ActiveProspect incorporates its earlier responses to the foregoing paragraphs.

111. The allegations of Paragraph 111 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, ActiveProspect denies the allegations of Paragraph 111 of the FAC.

1 112. The allegations of Paragraph 112 of the FAC are legal arguments or conclusions as
2 to which no responsive pleading is required. To the extent a response may be required,
3 ActiveProspect denies the allegations of Paragraph 112 of the FAC.

4 113. The allegations of Paragraph 113 of the FAC are legal arguments or conclusions as
5 to which no responsive pleading is required. To the extent a response may be required,
6 ActiveProspect denies the allegations of Paragraph 113 of the FAC.

7 114. The allegations of Paragraph 114 of the FAC are legal arguments or conclusions as
8 to which no responsive pleading is required. To the extent a response may be required,
9 ActiveProspect denies the allegations of Paragraph 114 of the FAC.

10 115. The allegations of Paragraph 115 of the FAC are legal arguments or conclusions as
11 to which no responsive pleading is required. To the extent a response may be required,
12 ActiveProspect denies the allegations of Paragraph 115 of the FAC.

13 116. The allegations of Paragraph 116 of the FAC are legal arguments or conclusions as
14 to which no responsive pleading is required. To the extent a response may be required,
15 ActiveProspect denies the allegations of Paragraph 116 of the FAC.

16 117. The allegations of Paragraph 117 of the FAC are legal arguments or conclusions as
17 to which no responsive pleading is required. To the extent a response may be required,
18 ActiveProspect denies the allegations of Paragraph 117 of the FAC.

19 118. The allegations of Paragraph 118 of the FAC are legal arguments or conclusions as
20 to which no responsive pleading is required. To the extent a response may be required,
21 ActiveProspect denies the allegations of Paragraph 118 of the FAC.

22 119. The allegations of Paragraph 119 of the FAC are legal arguments or conclusions as
23 to which no responsive pleading is required. To the extent a response may be required,
24 ActiveProspect denies the allegations of Paragraph 119 of the FAC.

25 120. The allegations of Paragraph 120 of the FAC are legal arguments or conclusions as
26 to which no responsive pleading is required. To the extent a response may be required,
27 ActiveProspect denies the allegations of Paragraph 120 of the FAC.

28

1 121. The allegations of Paragraph 121 of the FAC are legal arguments or conclusions as
2 to which no responsive pleading is required. To the extent a response may be required,
3 ActiveProspect denies the allegations of Paragraph 121 of the FAC.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATIVE DEFENSES

ActiveProspect asserts the following affirmative defenses. By enumerating the subjects below as affirmative defenses, ActiveProspect does not concede that any such matter is an affirmative defense, as opposed to an element of Plaintiffs' claim as to which it bears the burden of proof. ActiveProspect does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiffs. Moreover, nothing stated herein is intended to or shall be construed as an acknowledgement that any particular issue or subject matter necessarily is relevant to Plaintiffs' allegations.

FIRST AFFIRMATIVE DEFENSE

(Standing/Lack of Injury)

1. Plaintiffs lack standing because they did not suffer any concrete injury and they did not suffer any of the injuries alleged in the Amended Complaint. Plaintiffs do not and cannot allege any invasion of privacy rights or any wrongful disclosure. Plaintiffs lack standing to bring claims pursuant to California Penal Code sections 631 because they consented to the alleged activities.

SECOND AFFIRMATIVE DEFENSE

(Consent, Ratification)

2. Plaintiffs consented and/or ratified the alleged activities by assenting to Prudential's privacy notice.

THIRD AFFIRMATIVE DEFENSE

(Acts Of Third Parties)

3. Damages or injuries suffered by Plaintiffs, if any, are attributable to the conduct, deeds, words, acts and/or omissions of third parties, and not ActiveProspect .

FOURTH AFFIRMATIVE DEFENSE

(Failure To Mitigate Damages)

4. Plaintiffs failed to mitigate their damages, if any damages exist, which results in a reduction of damages by the amounts by which Plaintiffs could have mitigated damages but did not do so.

FIFTH AFFIRMATIVE DEFENSE

(Laches)

5. Plaintiffs' claims for relief are barred by the equitable doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

(Waiver)

6. Plaintiffs' claims for relief are barred by the equitable doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

7. Plaintiffs' claims for relief are barred by the equitable doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

(Acquiescence)

8. Plaintiffs' claims for relief are barred by the equitable doctrine of acquiescence.

NINTH AFFIRMATIVE DEFENSE

(Penalties Unjust, Arbitrary and Oppressive, or Confiscatory)

9. Plaintiffs are not entitled to recover any civil penalties because, under the circumstances of this case, any such recovery would be unjust, arbitrary and oppressive, or confiscatory.

TENTH AFFIRMATIVE DEFENSE

(Due Process)

10. Plaintiffs are not entitled to recover any civil penalties because, under the circumstances of this case, any such recovery would violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

ELEVENTH AFFIRMATIVE DEFENSE

(Public Policy)

11. Plaintiffs' allegations and attempts to construe California Penal Code section 631 as prohibiting ActiveProspect from performing the activities alleged in the Amended Complaint constitutes a strained reading of these sections of the California Penal Code against public policy.

TWELFTH AFFIRMATIVE DEFENSE

(Good Faith/Lack of Intent)

12. At all relevant times, ActiveProspect acted in good faith and had no intent to violate California Penal Code section 631.

ADDITIONAL AFFIRMATIVE DEFENSES

13. ActiveProspect has alleged the affirmative defenses of which it is currently aware. ActiveProspect may become aware of additional affirmative defenses available to it after further discovery and/or investigation. Accordingly, ActiveProspect reserves the right to assert additional affirmative defenses once such defenses have been fully ascertained. If so, ActiveProspect will move to amend this Answer and Affirmative Defenses.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray as follows:

1. That Plaintiffs recover nothing by reason of its FAC, and that the FAC be dismissed with prejudice;
2. That Defendants be awarded their costs and expenses of suit, including reasonable attorneys' fees; and
3. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), ActiveProspect demands trial by jury of all issues so triable under the law.

1 DATED: July 24, 2023

MUNGER, TOLLES & OLSON LLP

2
3 By: /s/ Kelly M. Klaus

4 KELLY M. KLAUS

5 Attorneys for Defendants
6 PRUDENTIAL FINANCIAL, INC. and
7 ACTIVEPROSPECT, INC
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28